

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Petition of AT&T Inc. for Forbearance)

Under 47 U.S.C. § 160(c) with Regard to)

Certain Dominant Carrier Regulations for)

In-Region, Interexchange Services)

WC Docket No. 06-120

SEP 09 2007

FEDERAL COMMUNICATIONS COMMISSION

MEMORANDUM OPINION AND ORDER

Adopted: August 30, 2007**Released: August 31, 2007**

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. In this Order, we address in part a petition filed by AT&T Inc. (AT&T) requesting that we forbear, pursuant to section 10 of the Communications Act of 1934, as amended (Communications Act or Act),¹ from applying certain dominant carrier regulations to in-region, interstate, interexchange services, including international services, provided by any AT&T affiliates.² In its petition, AT&T also requests that the Commission forbear from applying our separate affiliate requirements for independent incumbent local exchange carriers (independent incumbent LECs) to AT&T's provision of interexchange services in AT&T's independent incumbent LEC service areas.³ Finally, AT&T requests that the Commission forbear from "obligations that require BOCs to inform new customers that they have a choice of long distance providers and to read them a list of providers."⁴ As described below, because we grant AT&T, as well as the other Bell Operating Companies (BOCs), relief from many of these obligations in the *Section 272 Sunset Order*,⁵ we find much of the AT&T Petition to be moot. To the

¹ 47 U.S.C. § 160. Congress enacted section 10 as part of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). Section 10 is codified at 47 U.S.C. § 160.

² Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, at 1, 31-36 (filed June 2, 2006) (AT&T Petition). On June 23, 2006, the Wireline Competition Bureau (Bureau) issued a public notice inviting comment on AT&T's Petition. See *Pleading Cycle Established for Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Public Notice, 21 FCC Rcd 6862 (WCB 2006). The Appendix lists the commenters on AT&T's Petition. On May 30, 2007, the Bureau, pursuant to section 10(c) of the Act, extended by 90 days (until August 31, 2007) the date by which the petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act. *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Order, 22 FCC Rcd 9960 (WCB 2007).

³ AT&T Petition at 1, 36.

⁴ *Id.* at 1, 37-38.

⁵ See *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, 2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Report and Order and (continued....)

extent AT&T seeks relief beyond that which we grant in the *Section 272 Sunset Order*, we find that AT&T has not shown that forbearance meets the statutory criteria. Therefore, we deny those portions of AT&T's forbearance petition that go beyond the relief afforded in our *Section 272 Sunset Order*.

II. BACKGROUND

2. In its forbearance petition, AT&T seeks relief from the application of certain dominant carrier requirements to the provision of in-region, interstate and international, interexchange services by AT&T affiliates.⁶ Specifically, AT&T seeks forbearance relief from tariffing requirements and price cap regulation in part 61 of the Commission's rules;⁷ as well as discontinuance, assignment, and transfer of control rules in part 63 of the Commission's rules.⁸ AT&T also asks that the Commission forbear from applying its separate affiliate requirements governing independent LEC provision of in-region, interstate, interexchange or international services to AT&T's affiliates Southern New England Telephone Company (SNET) and Woodbury Telephone Company (Woodbury).⁹ AT&T further seeks forbearance from the Commission's equal access scripting requirement (EA Scripting Requirement).¹⁰ AT&T also seeks clarification from the Commission regarding the treatment of a BOC's post-sunset, in-region interLATA services under the Commission's accounting rules.¹¹

3. In the *Section 272 Sunset Order*, we establish a new framework, consistent with the Commission's decision in the *Qwest Section 272 Sunset Forbearance Order*,¹² to govern the provision of in-region, long distance services by the BOCs and their independent incumbent LEC affiliates.¹³ This new framework allows AT&T and its independent incumbent LEC affiliate to provide in-region, long distance services either directly or through affiliates that are neither section 272 nor Commission rule 64.1903 separate affiliates subject to nondominant carrier regulation, as long as AT&T complies with certain targeted safeguards adopted in the *Section 272 Sunset Order* and with other continuing statutory

(Continued from previous page)

Memorandum Opinion and Order, FCC 07-159, at paras. 75-78, 87-88, 125-26 (rel. Aug. 31, 2007) (*Section 272 Sunset Order*).

⁶ AT&T Petition at 1.

⁷ *Id.* at 31-33.

⁸ *Id.* at 35.

⁹ *Id.* at 36. We note that effective May 31, 2007, AT&T merged Woodbury into SNET. Letter from Michelle Selater, Director, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-120 (filed June 1, 2007).

¹⁰ AT&T Petition at 37.

¹¹ *Id.* at 37-38, n.118. Specifically, AT&T requests that the Commission clarify that these services would be treated as regulated services under the Commission's accounting rules. *See id.*

¹² *See Petition of Qwest Communications International, Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Red 5207 (2007) (*Qwest Section 272 Sunset Forbearance Order*).

¹³ As in the *Section 272 Sunset Order*, we use the term "in-region, long distance" to refer collectively to: (1) the in-region, domestic, interLATA telecommunications services and the in-region, international telecommunications services that the BOCs were previously required to provide only through section 272 separate affiliates; (2) the in-region, domestic, interstate, interexchange telecommunications services and in-region, international telecommunications services that the BOCs' independent incumbent LEC affiliates are required to provide only through rule 64.1903 separate affiliates; and (3) the BOCs' in-region, interstate, intraLATA, interexchange telecommunications services. Each of these groups of services includes high-capacity services as well as traditional voice service. *See Section 272 Sunset Order*, at n.1.

and regulatory obligations described in the order.¹⁴ In the *Section 272 Sunset Order*, we also relieve the BOCs, including AT&T, and their independent incumbent LEC affiliates from the EA Scripting Requirement.¹⁵

III. DISCUSSION

A. Statutory Forbearance Standard

4. An integral part of the “pro-competitive, de-regulatory national policy framework”¹⁶ established in the 1996 Act is the requirement, set forth in section 10 of the Communications Act, that the Commission forbear from applying any provision of the Act, or any of the Commission’s regulations, if the Commission makes certain findings with respect to such provisions or regulations.¹⁷ Specifically, the Commission is required to forbear from any such provision or regulation if it determines that:

(1) enforcement of the provision or regulation is not necessary to ensure the telecommunications carriers’ charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.¹⁸ In making such determinations, the Commission also must consider pursuant to section 10(b) “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”¹⁹

B. Application of Statutory Forbearance Standard

5. As discussed below, our *Section 272 Sunset Order* grants AT&T much of the relief it seeks in the AT&T Petition with respect to dominant carrier regulation. To the extent AT&T seeks relief from dominant carrier regulation different from, or in addition to, that granted in the *Section 272 Sunset Order*, we find the request does not meet the statutory criteria of section 10. The *Section 272 Sunset Order* also grants AT&T the relief it seeks from the EA Scripting Requirement.²⁰ We therefore deny the AT&T Petition as moot with respect to its request for relief from dominant carrier regulation and the EA Scripting Requirement, and otherwise deny AT&T’s petition on the merits for failing to satisfy the statutory criteria of section 10.

1. Dominant Carrier Regulation

6. The new framework that we establish in the *Section 272 Sunset Order* grants AT&T the bulk of the relief from dominant carrier regulation that it seeks in its forbearance petition. Specifically, that order allows AT&T and its independent incumbent LEC affiliate to provide in-region, long distance services either directly or through affiliates that are neither section 272 nor rule 64.1903 separate affiliates subject to nondominant carrier regulation, as long as they comply with certain targeted safeguards and other continuing statutory and regulatory obligations.²¹ Once the *Section 272 Sunset Order* takes effect,²²

¹⁴ See *id.* at paras. 75-108.

¹⁵ See *id.* at paras. 117-126.

¹⁶ See *Joint Explanatory Statement of the Committee of Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113.

¹⁷ 47 U.S.C. § 160(a).

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 160(b).

²⁰ See *Section 272 Sunset Order*, at paras. 117-126.

²¹ *Id.* at paras. 75-108. These targeted safeguards mandate, among other requirements, that AT&T treat the costs and revenues from its BOCs’ and independent incumbent LEC affiliates’ direct provision of interLATA, long (continued....)

AT&T's BOCs and independent incumbent LEC affiliate will be relieved from their requirements in section 203 of the Act and certain of the Commission's price cap, rate of return, and tariffing rules with respect to these services.²³ At that time, these carriers also will no longer be subject to certain of our discontinuance and transfer of control rules for these services, as well as our contract filing and reporting requirements.²⁴ Thus, to the extent that AT&T's forbearance petition seeks relief comparable to what was granted in the *Section 272 Sunset Order*, we find that request moot.

7. To the extent that AT&T seeks relief from dominant carrier regulation different from, or in addition to, that granted in the *Section 272 Sunset Order*, we find that such additional relief would be inconsistent with the statutory forbearance criteria. As part of the new regulatory framework established in the *Section 272 Sunset Order*, AT&T will be subject to certain targeted safeguards as well as other continuing legal requirements.²⁵ This framework reflects our expert policy judgment regarding the appropriate relief from dominant carrier regulation and section 272 safeguards balanced against the competing public interest concerns.²⁶ The reasons that persuaded us to adopt this new framework also persuade us that it would be contrary to the public interest to alter or eliminate it in response to AT&T's petition.²⁷ Therefore, we find that granting AT&T relief from dominant carrier regulation different from, or in addition to, that granted in the *Section 272 Sunset Order* would be inconsistent with the public interest under section 10(a)(3).²⁸

2. Equal Access Requirements

8. In the *Section 272 Sunset Order*, we grant the BOCs and their independent incumbent LEC affiliates relief from the EA Scripting Requirement.²⁹ This relief reflects our expert policy judgment regarding the appropriate relief from the EA Scripting Requirement balanced against the competing public interest concern. To the extent AT&T's petition seeks relief from this requirement or other equal access requirements different from the relief we grant in that order, we find that relief to be contrary to the public interest within the meaning of section 10(a)(3). Thus, insofar as AT&T's forbearance petition

(Continued from previous page) _____

distance services as nonregulated for accounting purposes. *Id.* at paras. 93-94. We therefore reject AT&T's assertion that the costs and revenues for these services should be treated as regulated for accounting purposes. *See AT&T Petition* at 37-38, n.118.

²² The new framework adopted in the *Section 272 Sunset Order* will take effect 30 days after notice of it is published in the Federal Register, subject to Office of Management and Budget (OMB) approval for new or modified information collection requirements. *Section 272 Sunset Order*, at para. 138.

²³ *Id.* at para. 76.

²⁴ *Id.* at paras. 77-78.

²⁵ *Id.* at paras. 89-108.

²⁶ *Id.* at paras. 109-111.

²⁷ 47 U.S.C. § 160(a)(3).

²⁸ In addition, the Commission found that the targeted safeguards and other continuing legal requirements relied upon in the *Section 272 Sunset Order* are needed to protect against the possible exercise of market power by AT&T and the other BOCs. *Section 272 Sunset Order*, at para. 110. We thus find that the new regulatory framework adopted in that order is necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [AT&T's interexchange services] are just and reasonable and are not unjustly or unreasonably discriminatory" and necessary for the protection of consumers. 47 U.S.C. §§ 160(a)(1), (a)(2). Nothing in the record here convinces us to reach a different conclusion.

²⁹ *See Section 272 Sunset Order*, at paras. 119-26.

seeks relief comparable to what was just granted in the *Section 272 Sunset Order*, we also find that request to be moot.

IV. EFFECTIVE DATE

9. Consistent with section 10 of the Act and our rules, the Commission's forbearance decision shall be effective on Friday, August 31, 2007.³⁰ The time for appeal shall run from the release date of this Order.

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to section 10(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c), that AT&T's Petition for Forbearance, filed June 2, 2006, IS DENIED except to the extent that it is granted in the *Section 272 Sunset Order*.

11. IT IS FURTHER ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the Commission's forbearance decision SHALL BE EFFECTIVE on August 31, 2007. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.13, the time for appeal shall run from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ See 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a) ("The Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.").

APPENDIX**Comments****WC Docket No. 06-120****Commenters**

Commenter	Abbreviation
ACS of Anchorage, Inc.	ACS
COMPTEL	COMPTEL
General Communication, Inc.	GCI
McLeodUSA Telecommunications Services, Inc.	McLeod
Sprint Nextel Corporation	Sprint Nextel
The National Association of State Utility Consumer Advocates	NASUCA
Verizon	Verizon

Reply Commenters

Reply Commenter	Abbreviation
ACS of Anchorage, Inc.	ACS
AdHoc Telecommunications Users Committee	AdHoc
AT&T Inc.	AT&T
COMPTEL	COMPTEL
General Communications, Inc.	GCI
The National Association of State Utility Consumer Advocates	NASUCA
Verizon	Verizon

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. Sec. 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region Interchange Services, WC Docket No. 02-112, CC Docket No. 00-175, and WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order*

Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120, Memorandum Opinion and Order

In these orders, we grant relief from dominant carrier regulation of the Bell Operating Companies' (BOCs') in-region, interstate, long distance services. This is a classic instance where regulation had been appropriate to protect emerging competitors and consumers, but where the relevant market has become sufficiently competitive to warrant less onerous regulation, while continuing to protect consumers.

In place of the outmoded regulation, we establish a more appropriate regulatory framework that responds to the level of competition in the long distance services market and is uniformly applicable to all the BOCs. One of those safeguards is the adoption of special access metrics that were approved in the *BOC Merger Orders* and the *Qwest Section 272 Sunset Forbearance Order*. This is an example where a condition of specific mergers has market-wide validity. I am pleased to support adoption of this narrowly-tailored requirement on a uniform basis. Our order today also establishes regulatory parity.

While we grant relief to the BOCs, the independent incumbent local exchange carriers continue to be subjected to regulation that may be ripe for a lighter regulatory touch. If those carriers choose to seek such relief, I would seriously consider those requests based on relevant substantiation of their competitive situations.

I thank Chairman Martin for his leadership and hard work on these orders and I am delighted to support his effort.